IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8694 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASSISTANT ENGINEER (PHONES) - Petitioner(s)

Versus

MAHESH K PARMAR - Respondent(s)

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Appearance :

MR KETAN A DAVE for Petitioner No(s).: 1.

MR RC PATHAK for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 14/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 24th March, 1995 passed by the Central Industrial Tribunal, Gujarat at Ahmedabad in Reference [I.T.C.] No. 53/89, whereby the Industrial Tribunal has directed the petitioner to reinstate the respondent on his original post with full back wages.

2. The short facts of the case are that the respondent was working as a Casual Labourer on daily wage basis. Since the work was not available, the service of the respondent was terminated w.e.f. 1st August, 1987.

2.1. Feeling aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Industrial Tribunal for adjudication. The Industrial Tribunal, after appreciating the materials placed before it, passed the impugned award. Hence, this petition.

2.2. Mr. Dave learned advocate for the petitioner has contended that though the respondent has not established that he had worked for 240 days in a year, the Industrial Tribunal has erred in holding that the service of the respondent was terminated in contravention of provisions of Section 25G & H of the Industrial Disputes Act, 1947.

3. I have heard the learned counsel for the parties. Having perused the materials placed on record, it transpires that the Industrial Tribunal has not committed any error in ordering to reinstate the

respondent in service. The Industrial Tribunal has found that though the respondent was performing the duties of a permanent worker, the petitioner has terminated the services of the respondent without following any procedure under the Industrial Disputes Act. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Industrial Tribunal for awarding reinstatement in service to the respondent.

4. However, the Industrial Tribunal while awarding back wages has not given cogent reason and has granted as a matter of course. In view of the principle laid down by the Apex Court that “No Work No Pay” grant of back wages was not justified. Thus, the impugned award of the Labour Court qua the direction of back wages is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The order dated 24th March, 1995 passed by the Central Industrial Tribunal, Gujarat at Ahmedabad in Reference [I.T.C.] No. 53/89, qua the direction with regard to grant of back wages is quashed and set aside and rest of the award is confirmed. The respondent shall be reinstated in service on or before 16th August, 1005.

The petitioner shall pay the benefits from the date of publication of the award, after deducting the benefits granted under Section 17B of the Industrial Disputes Act, within a period of six months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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